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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,605	06/27/2003	Tsutomu Umehara	5000-5110	7610
27123	7590	01/12/2005	EXAMINER	
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			RICHTER, SHELDON J	
			ART UNIT	PAPER NUMBER
			3748	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/607,605

Applicant(s)

UMEHARA ET AL.

Examiner

Sheldon J Richter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 12 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 4, 9-11 and 13-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. Claims 1-2, 5-8, 12 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Itoyama et al. Fig.1 of Itoyama et al discloses an apparatus for controlling recirculation of exhaust gas from an exhaust passage 8 of an engine 5 to an intake passage 4 of the engine 5, the apparatus comprising a recirculation passage 10 connecting the exhaust passage 8 to the intake passage 4; an EGR valve 9 arranged in the recirculation passage 10, wherein the EGR valve varies its opening degree to adjust the amount of exhaust gas recirculated from the exhaust passage 8 to the intake passage 4; and a controller 12 for controlling the EGR valve. With reference to the last limitation recited in the last paragraph in claims 1 and 17, this feature is considered to be inherent in Itoyama et al. Since no valve can fully open instantaneously, this limitation is considered to read upon the device disclosed in Itoyama et al.

2. Claims 1-3, 5-8, 12 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Buckland et al. Fig.1 of Buckland et al discloses an apparatus for controlling recirculation of exhaust gas from an exhaust passage 28 of an engine 16 to an intake passage 26 of the engine 16, the

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apparatus comprising a recirculation passage 32 connecting the exhaust passage 28 to the intake passage 26; an EGR valve 34 arranged in the recirculation passage 32, wherein the EGR valve varies its opening degree to adjust the amount of exhaust gas recirculated from the exhaust passage 28 to the intake passage 26; and a controller 12 for controlling the EGR valve. With reference to the last limitation recited in the last paragraph in claims 1 and 17, this feature is considered to be inherent in Buckland et al. Since no valve can fully open instantaneously, this limitation is considered to read upon the device disclosed in Buckland et al.

3. Claims 1, 5-8, 12 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Shibagaki. Fig.1 of Shibagaki discloses an apparatus for controlling recirculation of exhaust gas from an exhaust passage 33 of an engine 11 to an intake passage 32 of the engine 11, the apparatus comprising a recirculation passage 42 connecting the exhaust passage 33 to the intake passage 32; an EGR valve 43 arranged in the recirculation passage 42, wherein the EGR valve varies its opening degree to adjust the amount of exhaust gas recirculated from the exhaust passage 33 to the intake passage 32; and a controller 92 for controlling the EGR valve. With reference to the last limitation recited in the last paragraph in claims 1 and 17, see paragraph number 0088 on page 7 of Shibagaki.

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4. Claims 1, 5-8, 12 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Sausner et al. Fig.1 of Sausner et al discloses an apparatus for controlling recirculation of exhaust gas from an exhaust passage 23 of an engine 22 to an intake passage 6 of the engine 22, the apparatus comprising a recirculation passage 20 connecting the exhaust passage 23 to the intake passage 6; an EGR valve 1 arranged in the recirculation passage 20, wherein the EGR valve varies its opening degree to adjust the amount of exhaust gas recirculated from the exhaust passage 23 to the intake passage 6; and a controller for controlling the EGR valve. With reference to the last limitation recited in the last paragraph in claims 1 and 17, see the second full paragraph in column 3 of Sausner et al.

#### ***Allowable Subject Matter***

5. Claims 4, 9-11, 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claim 16 is allowed.

#### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See controller

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50 of Kushi, the first full paragraph of column 5 in Sinnamon, the paragraph bridging columns 1 and 2 of Nanba et al, the second full paragraph in column 13 of Takahashi et al, Kono and Kanbara et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheldon J Richter whose telephone number is (571) 272-4863. The examiner can normally be reached on M-F 9:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Denion can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SJR



Sheldon J Richter  
Primary Examiner  
Art Unit 3748